

Attorney Docket No. 2003-0093/N1085-00156

### REMARKS

1. Claims 1-13 are pending and stand rejected. This paper adds claims 14-20.

Reconsideration of this application is respectfully requested.

2. It is noted that the non-final Office Action mailed on November 1, 2005 has been replaced with the present Office Action, which has been made final. It is respectfully submitted that the finality of this Office Action is premature.

The Applicants timely filed a reply on February 1, 2006 (the February 1 reply), which was responsive to the rejections made in the non-final Office Action mailed on November 1, 2005 (November 1 Office Action). The reply filed on February 1, 2006 did not amend the application.

It is improper for the Examiner to vacate the November 1, 2005 Office Action and the Applicant's corresponding February 1 reply, so that the present Office Action can be made final based on the amendments made in the amendment and response filed on September 15, 2006.

Accordingly, withdrawal of the finality of the present Office Action is respectfully requested.

3. Claims 1-3 and 5-13 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,800,525 to Ryu et al. (Ryu). This rejection is respectfully traversed.

Ryu can not be used as a reference to anticipate claims 1-3 and 5-13 under 35 U.S.C. 102(b) because it issued on October 5, 2004, which is after the October 20, 2003 filing date of the present application. In addition, the application from which the Ryu

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patent issued has a publication date (February 12, 2004), which is after the October 20, 2003 filing date of the present application.

In addition to the fact that Ryu can not be used as a reference under 35 U.S.C. 102(b), Ryu does not expressly or inherently describe, teach or suggest the subject matter of independent claim 1 of the present application, which recites inter alia, "...a first conductive material layer between said pair of floating gate layer portions, and a first dielectric layer above said first conductive material layer... ."

Although the Examiner alleges that layer 206 (derived from layer 205) in Ryu is the claimed "first dielectric layer," it can be clearly seen from the figures in Ryu (e.g., FIGS. 2c-2e) that the "first dielectric layer 206" is not above a first conductive material layer that is between the pair of floating gate layer portions, as required by claim 1. This is because there is no "first conductive material layer 202" between the pair of floating gate layer portions in FIGS. 2c-2e. The first dielectric layer 206 is above the floating gate layer portions. Moreover, the "first dielectric layer 205", from which layer 206 is derived, does not cover the portion of the first conductive material layer 202 that is between the pair of floating gate layer portions, as clearly shown in FIG. 2b. Hence, claims 1-3 and 5-13 are clearly allowable over Ryu.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

4. Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ryu as applied to claims 1 and 2, and further in view of U.S. Patent 6,706,592 to Chern et al. (Chern).

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The arguments set forth above respecting Ryu are incorporated herein by reference.

Chern fails to cure the deficiencies of Ryu, as Chern does not teach or suggest "...a first conductive material layer between said pair of floating gate layer portions, and a first dielectric layer above said first conductive material layer..." not taught or suggested by Ryu. Claim 4, therefore, is allowable over Ryu in view of Chern for at least this reason.

In view of the foregoing, withdrawal of this rejection is respectfully requested.

5. Newly added claims 14 and 15 depend from claim 1 and, therefore, are allowable over Ryu and Ryu in view of Chern.

Newly added claims 16-18 recite, inter alia, "...providing a substrate comprising a pair of floating gate layer portions and a first conductive material layer between said pair of floating gate layer portions and spaced therefrom; forming a first dielectric layer above said first conductive material layer..." Ryu and Ryu in view of Chern do not describe, teach or suggest this subject matter.

Newly added claims 19-20 recite, inter alia, "...providing a substrate comprising a pair of floating gates and a first conductive material layer between said pair of floating gate layers and spaced therefrom, and a first dielectric layer above said first conductive material layer..." Ryu and Ryu in view of Chern do not describe, teach or suggest this subject matter.

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6. Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1-20 are in condition for allowance. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants' undersigned attorney at his number listed below.

7. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 04-1679.

Respectfully submitted,



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